Supreme Court, U.S.
FILED
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No. 93-1527

In The

Supreme Court of the United States

October Term, 1993

HENRY LEON ROGERS,

Petitioner,

v.

CITY OF INVERNESS, FLORIDA and
CHIEF MASSEY W. COOK,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTION PRESENTED FOR REVIEW

Whether a municipal residency requirement is constitutional when it is rationally related to some legitimate government purpose even if it establishes a geographic boundary larger than the municipality?

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APPENDIX

Respondents accept and adopt Petitioner's Appendix A,B,C & D

Appendix E - Map of Citrus County 1a

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BRIEF IN OPPOSITION

Respondents, the City of Inverness, Florida and Chief Massey W. Cook, respectfully request that this Court deny the petition for a writ of certiorari seeking review of a decision of the United States Court of Appeals for the Eleventh Circuit.

STATEMENT OF THE CASE

A. The Statute

Respondents accept the Statement of the Statute, except that respondents disagree as to the last sentence.

(Pet. for Cert. 3) Rather, it is clear the residency requirement is based on a rational relationship to a legitimate government purpose and it is consistently enforced.

B. The Facts

The two largest cities in Citrus County are Crystal River west of S.R. 491 and Inverness east of S.R. 491. (Resp. Appendix E, 1a)

At the time Rogers joined the Inverness Police Department there was a residency requirement that officers live east and south of S.R. 491. Rogers lived four miles west of S.R. 491 not two miles, as alleged in Petitioner's Statement of Facts. (Pet. for Cert. 3)

Rogers was aware of the residency requirement and requested a waiver with the promise to move into the required area as soon as he could find a suitable place. He was hired on the condition that he would comply and the City *temporarily* waived the requirement for one year as a convenience to give Rogers time to move within the residency requirement boundaries. However, Rogers did not move.

The City advised Rogers in June 1991 that he must comply with the residency requirement within 31 days. Again, he did not move. Claiming moving would be a hardship, Rogers requested another waiver. The request was denied but Rogers was given a 90-day extension to comply with the residency requirement. Still, Rogers did not move. Instead he resigned under protest and filed a five-count complaint based on the residency requirement.

C. Prior Proceedings

Respondents accept Petitioner's statement of prior proceedings.

REASON FOR DENYING THE WRIT

The United States Court of Appeal did not depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Almost 100 years ago this Court recognized that certiorari is a power "which will be sparingly exercised and only when the circumstances of the case satisfy [the court] that the importance of the question involved, the necessity of avoiding conflict . . . or some matter affecting the interests of this nation in its internal or external relations, demands such exercise." *Forsyth v. Hammond*, 166 U.S. 506, 514, 41 L. Ed. 1095, 17 S. Ct. 665 (1896).

Currently under Rule 10.1 of this Court, a Petition for Writ of Certiorari should be granted only where there are special and important reasons therefor. There are no special or important reasons in the case at bar. The decisions below were accurate and fair and in full accord with other cases.

The residency issue was resolved twice in favor of the respondents and now the petitioner asks this Court to make a third review. But this Court, too, has upheld residency requirements. *McCarthy v. Philadelphia Civil Serv. Comm'n*, 424 U.S. 645, 47 L. Ed. 2d 366, 96 S. Ct. 1154 (1976).

There is nothing about the residency requirement or its application to the petitioner to warrant review here. The posture of this case is simple: the City of Inverness had a valid residency requirement of which Rogers was aware when he was hired. He was given several opportunities to comply with the residency requirement but did not. Rather, he resigned under protest and sued the city. The law suit was based on the residency requirement and was dismissed after careful consideration and a well-reasoned opinion by the District Court of the Middle District of Florida. (Pet. Appendix C, 3a)

In the Eleventh Circuit, wherein this matter arose, the hallmark residency-requirement case is *Wright v. City of Jackson, Mississippi*, 506 F.2d 900 (5th Cir. 1975).[1] In *Wright*, it was recognized there are a number of rational interests in municipal public policy to justify a residency requirement. Moreover, a residency requirement need only bear a rational relationship to *one* legitimate government purpose to be constitutional under equal protection. *Wright v. City of Jackson, Mississippi*, 506 F.2d at 904.

The Middle District of Florida in the case at bar recognized there are a number of rational reasons in Inverness' public policy to justify its residency requirement. The trial court envisioned three as examples.[2]

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[1] Decisions of the Fifth Circuit prior to September 30, 1981, are binding on the Eleventh Circuit Court of Appeals and upon the United States District Court for the Middle District of Florida. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

[2] "For example, the City could cite to any of the following reasons: that city employees should be part of the community

The petitioner contends there are no valid reasons to support the requirement because the residency restriction does not limit residency to Inverness but rather limits residency to the eastern half of Citrus County wherein Inverness is located. However, because of the geography of the area the residency requirement as written is no different than a mileage limitation on residency. Mileage limitations consistently have been upheld as constitutional. *See, e.g., Burke v. Chief of Police*, 373 N.E.2d 949 (Mass. 1978), Statute providing police officers may reside within 10 miles of city limits was valid; *International Ass'n of Fire Fighters v. City of San Leandro*, 226 Cal. Rptr. 238 (1986), City requirement that its fire department personnel reside within 40 road miles from fire station was both reasonable and specific.

As can be seen in the map attached as Respondents' Appendix E, 1a, State Road 491 bisects Citrus County. Inverness sits squarely within the area bounded by State Road 491 on the north and west and the Withlacoochee River on the east and south. The Withlacoochee forms the natural boundary of north and east Citrus County. So, the river in conjunction with State Road 491 forms an easily identifiable geographic residency boundary surrounding the City of Inverness. The residency requirement therefore obviously is defined appropriately and requiring

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they serve in order to understand and identify with its problems; that residency requirements serve to diminish absenteeism and tardiness among city workers; or that the city benefits economically from local expenditure of employees' salaries." (Pet. Appendix C, 5a)

police officers to live within a geographic area surrounding Inverness is sound and rationally related to the purpose for which the government exists.

The only real question raised in the petition turns on the particular facts of this case alone and is of interest only to the parties to it. That is, the geography of Citrus County and location of Inverness within it creates facts pertaining to the residency requirement that are peculiar and not likely to recur and therefore do not justify review by this Court.

The petitioner's other arguments are specious. For example, the fact that petitioner lives within four miles of the boundary is of no import. In *Simien v. City of San Antonio*, 809 F.2d 255 (5th Cir. 1987), *reh'g denied*, en banc, 814 F.2d 658 (5th Cir. 1987), the plaintiff lived only two blocks from the boundary. However, since the San Antonio residency requirement under attack had a rational relationship to a legitimate government purpose the requirement was upheld.

As can be seen above, there is nothing special or important about this case to anyone other than the parties involved. The lower courts appropriately reviewed the matter and reached a fair result. The petitioner is not satisfied with the lower courts' adverse decisions but that does not rise to the level necessary to invoke the jurisdiction of this Court.

CONCLUSION

Petitioner has failed to demonstrate that a grant of certiorari is appropriate, and therefore the petition for a writ of certiorari should be denied.

Respectfully submitted,

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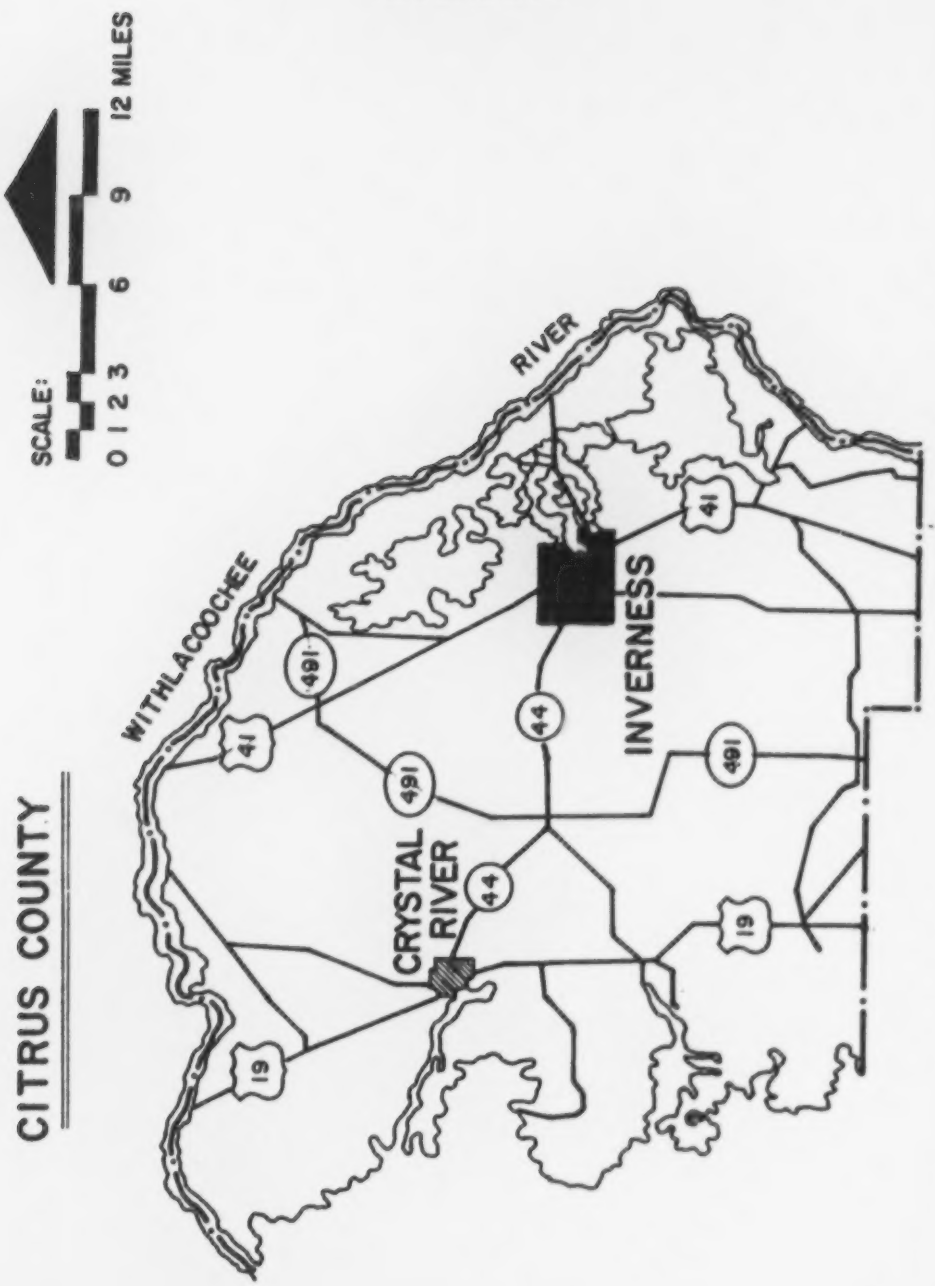
APPENDIX E


CITRUS COUNTY
SCALE:
0 1 2 3 6 9 12 MILES
WITHLACOOCHEE RIVER
INVERNESS
CRYSTAL RIVER
41
491
44
19